

YODER, CONVICTED BY JURY BEGINS SENTENCE IN JAIL

(Continued from First Page.)

Also relieve somewhat the condition of his anxious wife and family. It is not known what his wife will do in the meantime, but it is presumed that she will be cared for by Yoder's brothers, one of whom is said to have some means.

After adjourning court and thanking the members of the jury for their patience and conduct during the trial, the court entered its order that Yoder pay a fine of \$50 and the costs of the prosecution, and that he be confined in the City Jail for a term of fifteen days and thereafter until the said costs and fine be paid, the said confinement not to exceed the time prescribed by law, which is three months.

The costs will amount probably to \$50. Yoder is in debt to the extent of \$100, but he has until the end of his term in which to pay the fine and costs. After that he can be relieved of both on the plea of insolvency.

While the jury was out the petition of the Police Department, signed by every man on the force, that he divulge the names of the six officers who Yoder alleged gave him information on which he based his charges, that Police Officer Griffin was elected to the force through trickery was presented to him by Police Officer Gentry, who explained the nature of the contents of the petition. Yoder said that he would consider it, and placed the paper in his pocket.

Most of the day was taken up with argument by all five lawyers. Before argument was entered upon, however, the prosecuting attorney, Congressman Carter Glass of Lynchburg, he permitted to go to the stand and read the substance of Yoder's testimony that Mr. Glass's suit against the J. P. Bell Publishing Company was dropped because the Congressman was afraid that the truth of Yoder's statements would come out.

Mr. Glass read Yoder's letter of retraction and apology and also the letter of apology from the publishing company. He stated that he instituted suit against the publishing company as being the only way to get justice, that he took no notice whatever of Yoder. The suit, he said, was dismissed because of the written disclaimer of the publishing company. Three days, he said, after instituting the suit he received Yoder's apology, to which he replied. Both letters were afterwards published by Yoder. He admitted, however, that he had said in his letter to Yoder that there were other and more objectionable statements and charges, but he cited them as only defamatory rumors and criticisms. He said that he read only two of the letters to the Rev. Tilden Scherer when the latter telephoned to him Sunday, but that he told Mr. Scherer that he was only reading a part.

Mr. Scherer read Yoder's reply, bringing out that Mr. Scherer had said there were statements more objectionable to him which had not been included in the basis for a suit, but which Mr. Glass thought were only comments.

"Wait a moment," said Mr. Smith, as the witness was about to leave the stand. "Was that withdrawn because you were afraid?" "Of course not, sir," replied Mr. Glass, and without further word he left the stand to return home. He was accompanied by Jack B. Witt, who had represented him when the suit was instituted.

Yoder heeled to stand. Yoder was again put on the stand for a few minutes, and it was, perhaps, his indignation against James R. Gordon, father of Police Commissioner Gordon, which more than anything else turned the tide of opinion against him.

His statement had to do with the fact that one of the houses on Eighth Street which had been destroyed by the fire owned by the Whitlock estate, though he had not verified it when the article was written. Asked repeatedly for his inference from this piece of information, he refused to say, but it seemed to be generally understood that that was the "am" understanding brought that out," said Mr. Smith. "We want everything to come out. Have you anything more to say? We want you to have justice, and we won't deny you a chance. We'll let down the bars."

Mr. Gordon's statement when he went on the stand was very simple, but effective. He did not deny that the place in question was a part of the Whitlock estate, but that he had been bought about four years ago, when it was rented to some woman who had disagreed with her husband. He knew absolutely nothing about her, and so far as he knew she had rented it for charge of the place, and had placed in the hands of a real estate agent, and he had not kept up with the renting. He had never known that it had been intended that Yoder's insinuation could have had foundation, and if he had known the circumstances he would not have permitted it.

some of his charges, but has he made any correction? He has been receiving his information from J. Marshall Atkinson—such a man! And what have we? Refers to Outraged Community. "We have at last an outraged community, outraged citizens, and a man in Police Court on a trial for charges. And this man comes now and takes refuge behind what he calls a privileged communication, and dares still to urge that his base charges are true. His friend, Atkinson, tells him that conditions are rotten here; that he can come here and accomplish much good, incidentally making a little more money."

Mr. McGuire quoted and explained from the instructions, and said that the jury must believe Yoder guilty beyond all reasonable doubt. "But aren't you satisfied?" he asked. "Doesn't this man go beyond privileged communication? Does not his article tend to provoke to violence, his pamphlets published anywhere, anywhere and anyhow? It is being published as soon as he comes here, and it does not take him long to begin vilifying these gentlemen, pointing to the prosecutors, and what is he doing it for? Did he inquire carefully into the facts as he claims to have done, or was mere rumor and vague suspicion enough for him? When he charges that the courts are corrupt and that certain resorts pay for protection, is that mere insinuation, or an inquiry?"

"He," he said, "saw a conference in the Police Court, at the time of the Malloy trial, between Manning, Gordon and Crutchfield. But the witnesses have proved to you that there was not a conversation." He quoted again from the instructions, explaining them, and said they told the jury that a newspaper writer has no more rights than any other citizen. As to Yoder's charges, that there was a corrupt alliance between the Police Department and vice, he said that the jury had heard definitions from both sides, and that they knew the general acceptance of the word. "The word 'corrupt' occupied nearly half the time of argument in explaining it, for the meaning which Yoder meant it to have depended much of the charge of libel."

Then Mr. McGuire hammered into the jury proof of Yoder's malice against the three men and against the police force by exhibiting the famous caricature of the men and birds of prey, pecking at the coin, and by frequent quotations from Yoder's articles. He argued that if Yoder had made no proper inquiry into the facts, then he had no right to say that the police were corrupt. "Malice," he said, "is a wanton, reckless disregard of the rights of others as shown in all his articles, and after the Police Court hearing, when he heard Manning, Gordon and Crutchfield categorically deny his charges, and he has spread his defamations over the State, making it appear broadcast that in Richmond there is not a single honest official."

Mr. McGuire argued at more length on the instructions, and then rested for J. P. Patterson to take up the argument in Yoder's defense. Mr. Patterson delivered most of his argument on the instructions, explaining them lucidly to the jury. He said that they instructed the jury that a material fact must be included in determining the guilt or innocence of the prisoner, that the jury must believe beyond every reasonable doubt that Yoder wrote with malicious intent against these men to find him guilty. He said that it could not be said that his client bore personal spite or ill will against them, that the only evidence along that line was collateral, in that it merely showed

fees, and in God's name on what did he base his charges?" "Lawyers and licensees. Mr. Smith then referred to Yoder's attack on the lawyers, and how they were employed by barkeepers to help them get their licenses, and said that he charges that the lawyers got money and paid part of their fees to the court, and when I asked him for his proof and for his source of information, he gave me none. He explained to the jury how it is perfectly possible and perfectly legitimate for a barkeeper to employ a lawyer in such a matter, as the lawyer could help him to find what the people in the neighborhood thought and the hundred and one things on which a lawyer could advise an applicant.

He discussed Yoder's charges that Police Officer Moody had been dismissed from the force as the result of a "put-up job." "This charge," said Mr. Smith, "has been totally disproved, and I thank God the time has come when such a man as Moody cannot remain on the police force and exaggerate. He knew that if he had no charge to make, he would be discharged. He is hiding behind his little walls, but we have him in our light where all can see him and know the man he is. He rubbed Chris Manning's name from his little book, and he got at the guests in the Park Hotel to help rub the name of Manning, Esquire, didn't have anything to do with that religious little pamphlet. He still has a rotten deal, but the evidence is that a young girl got beat up in the Park Hotel. And they imported this man from Lynchburg to attack the courts and the 'malicious' Police Department. He comes down here filled with Atkinson's bilious pills, with the idea that his noble esquire got a 'rotten' deal, and begins his charges as a knight come down from the pulpit.

"He openly charges that the Mayor is under obligations to these dives he mentions. Great God, gentlemen, how could any one believe it? How could any one believe such a thing of Davy Richardson? And yet he says he had no malice." "Mr. Smith went into his proof of Yoder's malice in bringing such charges, strengthening his proof by Yoder's constant reiteration that the charges were true, that the Police Department is 'corrupt from centre to circumference.' "When he published his extract from the State Constitution, he purposely left out the exceptions laid down for police and firemen—this man who is so fair, this man who is so accurate. And yet he bears no malice in his heart. Suppose the commissioners do these things, can you say that it is a rotten deal, corrupt, and capable of bribery? Here is his intimation that they are bribed by women, by gamblers, by the Chemical Company, by the street car company. He can't assign a worthy motive in anything he does."

As Mr. Smith ended, the hush remained over the courtroom. Yoder had put on an air of supreme indifference, but now he was absolutely bored, with eyes shut, his little body reclining back in his chair. But he awoke in time to turn the pages of his pamphlets and of the instructions as his attorneys needed them. He would turn a page, and then go back to sleep, sleep that he would not wake until a page or two had passed. But he awoke when his attorney, Mr. Meredith, began.

Court adjourned for dinner when Harry Smith concluded his arraignment, and Mr. Meredith closed for the defense in the afternoon. "It is not," he began, "a case of Manning and Gordon against the accused, but a case of the Commonwealth against the prisoner at the bar. There have been few cases of criminal libel brought into court, for criminal libel generally ends in homicides, and with these slanderous attacks the homicides come in. As to Mr. Meredith's argument against the Commonwealth of private counsel, I will say that the public prosecutor has the right to get private counsel under the law, which specifically states that it is not a proper subject for animadversion or of harsh criticism." He quoted the law on the subject.

"These men have been held up to contempt of public scorn. But when they read the libel they did not take the law into their own hands. They have come into this court clear of mind and free of prejudice. Let the law take its course. The immortal part of man is that which he gets at a mother's knee—his reputation. And when he reads the libel they have been attacked, laid open. The wounds have been left open for continual pain. You can't get a man back and they had a right to come into court and bring counsel with them. But the Commonwealth is interested beyond the private interests, and let me remind you that this court has been defamed, that the judge has been vilified, and that justice has been made a mockery by the foul slander of this man's pen."

He paid a high compliment to Justice Crutchfield and to Judge Witt. "It is true," he said, "that these houses are in violation of the law, and I do not wish to exist in other cities, too. But you cannot see that as a man who has been a member of the Council, where Justice Crutchfield came in. He has been in the bench twenty-two years and has never been charged with anything but the most honorable conduct. It is the only means by which we may get information. It is the only means by which bad men in office may be pointed out that the citizens may relieve themselves. They have tried to make you bring in as harsh a verdict as can be allowed under the law. But I am not going to ask for it, and I am not asking simply for acquittal. This is a question of the freedom of the press, and it is for you now to mark out a line of conduct by which the newspapers can go. For your decision will be a precedent for the Commonwealth. "If you fail of acquittal, it will mean that men in office can do what they choose, and the newspapers can do nothing unless they take the risk of suit for libel. You know as well as I do that there are thousands of things that men in office should not do, but they ask you simply to give a warning to the press. "If I show you he made a mistake, I can prove it was simply by the acts of others. It is not that I have been committed but that the conduct of these men warranted the inference. Mr. Yoder, then what will you do? They have argued as if the burden of proof was upon us. But I will explain to you the law in a few minutes. You are told to take care, but you are told to take care of other people's reputations, except that as to Police Officer Griffin. He told the jury that it must consider every material fact, and that it must presume the prisoner innocent until the moment when he was proved guilty. "He demanded, 'didn't they deny that these lawyers have been

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Freedom of Press. He dwelt at length on that clause in the instruction which recognized the freedom of the press and the freedom of speech in discussing public acts of public officers. Much stress he laid on the freedom granted under the recognition of the "privileged communication," arguing that Yoder had not transgressed the right of freedom of speech. "He has shown you," he said, "by the evidence that he had knowledge that such a district as has been described existed, and was established by and under the consent of the Police Board, and the inference that the place was not overdrawn or exaggerated. He knew that it was a violation of the law, but he had no personal spite against any of the officials in declaiming against the wrong."

Mr. Patterson said that Yoder drew a reasonable inference in his report of the Malloy trial. And he said that even if the inference had been wrong it did not show the accused guilty unless it can be proved that he was of the Malloy trial. And he said that there had been no evidence that the accused had any personal ill-will or spite against the three men sitting against him.

If it can be proved that the Malloy house was not broken up, when it had been described as one of the worst places in the city, he argued, then it could be inferred that it was under protection. He said that newspapers which publish articles proved afterwards to be untrue could not be punished unless it were shown that they were inspired by a malicious motive. He said that it was a fair inference to conclude that as certain houses were not broken up, there was a "corrupt alliance." The result of the publication was to show that the Police Commissioners violated the law. "It is admitted," he said, "that the Police Commissioners established a district on their own responsibility; that their policy was not to obey the law, but to go outside the law, in violation of their oaths of office. And in Yoder's charge of a corrupt alliance the meaning goes no farther than that it may be inferred, as to this recognition of the district."

The defense was basing all its argument on the theory that Yoder was actuated by malice in none of his articles; that even if the statements were untrue it could not be shown that Yoder bore ill will against any of those whom he charged with crime. The prosecution based its argument on the theory that Yoder's connection with Atkinson was in itself a proof of malice, and that Yoder was a professional despoiler of character and made his living by selling reputations for a song.

SMITH MERCILESS IN HANDLING YODER

When Harry Smith opened as second in line for the prosecution there was a hush for the expected storm. "It is well," he began, "for the jury to understand my connection with undue influence on my argument or upon any criticism of this man I may venture." He had been criticized in Police Court by Mr. Meredith, representing, as Mr. Meredith charged, personal interests.

"I do not deny that these men are my warm personal friends; that two of them have been my friends for more than a quarter of a century. I make no denial that the publications I have filed my soul with indignation. Their demeanor under these trying circumstances have strengthened my admiration for them and have tightened our bonds of friendship. "I do not start this case. We did not bring it into court. That man at the bar, he attacked me, threw down the gauntlet, and I have accepted. Here is the field, and here are the judges. This noble knight, the Round Table of the Park Hotel, he hurled at the jury, 'Is here without throwing down his colors and indignantly fled the field.' "It is a spectacle that might well arouse the community, that has been so early unhorsed in the combat. But it must be remembered that he left many a sad scar, many a wound that must now be reckoned with."

"The only excuse for this man's unbridled scurrility is that there is such a district as he has described, and these gentlemen are responsible, and that in this respect, his article was justified. It is not an ordinary case of misdemeanor, nor an ordinary criminal case. Here you have a man educated in a college, a man of money, subtle reasoning and pleas for mercy began to pour about the prisoner behind the bar and over the room, thronged from end to end with curious, eager spectators. Murray M. McGuire, of the prosecution, began by saying, 'The case,' he said, 'is one of the Commonwealth, of the citizens, and you must consider it a grave matter. It is not an ordinary case of misdemeanor, nor an ordinary criminal case. Here you have a man educated in a college, a man of money, subtle reasoning and pleas for mercy began to pour about the prisoner behind the bar and over the room, thronged from end to end with curious, eager spectators. Murray M. 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